

THIRTEENTH
AMENDMENT

DRAWER 10

EXECUTIVE ROUTINE

71 2009 DEC 04 581



Abraham Lincoln's Executive Routine

Thirteenth Amendment

Excerpts from newspapers and other sources

From the files of the
Lincoln Financial Foundation Collection

FEBRUARY 1, 1865

his term in which he is pardoned for any desertions heretofore committed.

A. LINCOLN

Feb. 1, 1865

¹ Parke-Bernet Catalog 1026, January 10-11, 1949, No. 54. According to the catalog description, this note appears on a card on the back of which General John A. Dix wrote on February 6, 1865, an order to General Lewis C. Hunt, commanding troops in the city and harbor of New York, to "execute the President's order."

Resolution Submitting the Thirteenth Amendment to the States¹

February 1, 1865

Thirty-Eighth Congress of the United States of America;

At the second Session,

Begun and held at the City of Washington, on Monday, the fifth day of December, one thousand eight hundred and sixty-four.

A RESOLUTION

Submitting to the legislatures of the several States a proposition to amend the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both houses concurring), That the following article be proposed to the legislatures of the several States as an amendment to the constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as a part of the said Constitution, namely: Article XIII. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

SCHUYLER COLFAX

Speaker of the House of Representatives.

H. HAMLIN

Vice President of the United States,
and President of the Senate.

Approved, February 1. 1865.

ABRAHAM LINCOLN

¹ DS, DNA FS RG 11, Department of State. This printed form with blanks filled in by a clerk is the original resolution approved by Lincoln. Printed por-

FEBRUARY 1, 1865

tions are reproduced in italics. Engrossed copies bearing the signatures not only of Colfax, Hamlin, and Lincoln, but also of members of the Senate and House of Representatives, are in IHi and ORB. Presumably other signed copies may be in existence. Lincoln's approval of this resolution, although signed in accordance with his usual practice in approving resolutions and acts of congress, was unnecessary in the case of an amendment to the constitution. On February 7 the Senate passed a resolution declaring that "such approval was unnecessary," since the Supreme Court had decided in a case arising in 1798 that the president "has nothing to do with the proposition or adoption of amendments to the Constitution" (Remarks of Senator Trumbull, *Congressional Globe*, February 7, 1865, pp. 629-30). For an account of the adoption of the resolution, see Nicolay and Hay, *Abraham Lincoln: A History*, X, 72-90.

Response to a Serenade¹

February 1, 1865

The President said he supposed the passage through Congress of the Constitutional amendment for the abolishment of Slavery throughout the United States, was the occasion to which he was indebted for the honor of this call. [Applause.] The occasion was one of congratulation to the country and to the whole world. But there is a task yet before us—to go forward and consummate by the votes of the States that which Congress so nobly began yesterday. [Applause and cries—"They will do it," &c.] He had the honor to inform those present that Illinois had already to-day done the work.² [Applause.] Maryland was about half through; but he felt proud that Illinois was a little ahead. He thought this measure was a very fitting if not an indispensable adjunct to the winding up of the great difficulty. He wished the reunion of all the States perfected and so effected as to remove all causes of disturbance in the future; and to attain this end it was necessary that the original disturbing cause should, if possible, be rooted out. He thought all would bear him witness that he had never shrunk from doing all that he could to eradicate Slavery by issuing an emancipation proclamation. [Applause.] But that proclamation falls far short of what the amendment will be when fully consummated. A question might be raised whether the proclamation was legally valid. It might be added that it only aided those who came into our lines and that it was inoperative as to those who did not give themselves up, or that it would have no effect upon the children of the slaves born hereafter. In fact it would be urged that it did not meet the evil. But this amendment is a King's cure for all the evils. [Applause.] It winds the whole thing up. He would repeat that it was the fitting if not indispensable adjunct to the consummation of the great game we are playing. He could not but congratulate all pres-

The Process of CONSTITUTIONAL AMENDMENT

by
Denys P. Myers



PRESENTED BY MR. THOMAS OF UTAH, NOVEMBER 29,

[LEGISLATIVE DAY, NOVEMBER 19], 1940

Ordered to be printed

See p. 4, especially

THE PROCESS OF Constitutional Amendment



THE FIRST CONGRESS of the United States on September 25, 1789, approved a resolution embodying the articles which by December 15, 1791, became the first 10 amendments to the Constitution. In March and April 1939—150 years later—legislatures of the states of Connecticut, Georgia and Massachusetts ratified this Bill of Rights. The three states by their belated action wished, as Governor Saltonstall of Massachusetts said, to fill a blank page in their history and by manifesting their “true temper” intended to “contribute effectively to a better public realization of the protection which we enjoy under the Bill of Rights.” The action of the three states added nothing to the legal value or scope of the Constitution,¹ but the 30 ratifications which their action effected nevertheless registered a unanimous affirmative acceptance² of 10 amendments.

¹ Though the *Register and Manual, 1939*, of Connecticut, which contains the Constitution, noted that the state had “never ratified” those amendments, the authorities of the state did not question their validity as part of it.

² Admission of a state to the Union predicates its acceptance of the Constitution as it exists at the time. The formula employed in the case of Tennessee, during the assumed pendency of the 11th amendment (actually valid February 7, 1795, but not so notified until January 8, 1798), in the act of June 1, 1796 (1 Stat. 491), was that it was “hereby declared to be one of the United States of America, on an equal footing with the original states, in all respects whatever.” Tennessee was, however, one of the states from which the President was requested to obtain evidence of ratification by the resolution of March 2, 1797 (1 Stat. 519). The re-admission of Georgia to the Union as a consequence of ratification of the 14th amendment was the subject of a separate proclamation, July 27, 1868 (15 Stat. 708).

An occasion when there has been so much movement, without change, in the status of the amendments to the Constitution is not inappropriate for bringing together the data of law and experience of the unique disjunctive process by which proposals are transformed into amendments. The provisions of Article V of the Constitution have worked with such smoothness that examination of the whole process has not been required for any practical purpose, so that the relevant facts have never been assembled to solve any question of validity. It will be convenient to set down data in three categories: 1, Steps of the amending process; 2, proposals before the states; 3, some aspects of ratification.

1. STEPS OF THE AMENDING PROCESS

The process of amendment of the Constitution is one of the most distinctive features of our system of government, utilizing as it does the legislative and executive branches of the United States Government and affording free scope for the people, through their state governments, to decide as they wish. No part of the Constitution was better drafted than Article V which provides:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article;³ and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

The Congress has always been sufficiently forward in proposing amendments to forestall any "application of the legislatures of two thirds of the several States" for a convention to propose

³ The two clauses debarred Congress from prohibiting the admission of "persons" (for servitude implied) into any of the states and from laying any nonproportional capitation or other direct tax.

amendments.⁴ Altogether some 3,500 joint resolutions have been introduced into Congress to amend the Constitution;⁵ only 26 have reached the stage of proposals and only 21 of them have become valid as amendments.

Of the two modes of ratification provided, the convention has been designated only for the ratification of the 21st amendment.⁶

Aside from these two optional methods of procedure, the article stipulates that

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, . . . which . . . shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States.

A disjunctive procedure for carrying out those provisions has been carefully and consistently developed in the course of decades, being confirmed at some crucial points by judicial decisions, but always under the exclusive power of Congress to control.⁷ The consecutive occurrence of a series of specified acts

⁴ Benjamin Huntington (Connecticut) asked that Virginia's application to formulate a bill of rights, introduced into Congress May 5, 1789, be tabled until two thirds of the states should have presented similar requests (Gales, J., *The Debates and Proceedings in the Congress of the United States*, I, col. 251). A debate in the House of Representatives on March 7, 1796, arrived at the conclusion that Congress could not refuse to call a convention if application were made by two thirds of the states. William Smith of South Carolina, Benton's *Abridgement of the Debates of Congress*, I, 653.

⁵ Two studies have compiled the propositions from 1789 to 1928 and record 3,016 proposals in that 139 years. Ames, Herman V., *The Proposed Amendments to the Constitution of the United States during the first Century of its History* (American Historical Association, Annual Report, 1896, II, published as House Doc. No. 353, pt. 2, 54th Cong., 2d Sess.; Cong. serial 3550²); Musmanno, M. A., *Proposed Amendments to the Constitution. A Monograph on the Resolutions introduced in Congress proposing Amendments to the Constitution of the United States of America* (House Doc. No. 551, 70th Cong., 2d sess.; Cong. Serial 9017). Ames compiled (p. 306-421) a detailed parliamentary record of 1,736 propositions made to March 4, 1889, and Musmanno continues his analysis of the substance of propositions through 1928, stating that he considers 1,370 propositions without recording parliamentary details concerning them.

⁶ For a succinct account of the convention procedure involved, see Department of State, *Ratification of the Twenty-First Amendment to the Constitution of the United States* (Publication No. 573).

⁷ *Coleman et al. v. Miller et al.*, 307 U. S. 433, 454 [1939].

by bodies or individual officers has the eventual effect of establishing a fact, namely, that a particular proposal of amendment is "valid to all Intents and Purposes as part of this Constitution." The successive acts in this series, each of which is the function of a body or the duty of an individual, are:

- ✓ 1. The two Houses of Congress,⁸ each by a two-thirds vote, adopt a joint resolution⁹ embodying the proposal of amendment;¹⁰
2. The joint resolution¹¹ bears the signature of the Speaker

⁸ "The adoption by both Houses of Congress . . . sufficiently shows that the proposal was deemed necessary by all who voted for it." *Rhode Island v. Palmer* [National Prohibition Cases], 253 U. S. 350, 386 [1939]:

⁹ Article V "is a grant of authority by the people to Congress, and not to the United States." Congress functions as the delegated agent of the people. *United States v. Sprague*, 282 U. S. 716, 733 [1931]. Adoption of a proposition ✓ of amendment "is a substantive act" of the Congress, "unconnected with the ordinary business of legislation." *Hawke v. Smith*, No. 1, 253 U. S. at 229 [1920]. The resolution is consequently not a legislative act under Article I, sec. 7, of the Constitution. The Supreme Court, with reference to that section in 1798 (*Hollingsworth v. Virginia*, 3 Dall. 378), held that approval by the President was not requisite; confirmed by *Hawke v. Smith*, *cit.* See also John A. Jameson, *Treatise on Constitutional Conventions* (4th ed.), secs. 556, 557.

¹⁰ The resolution is itself dated only in the preamble and there by the date of beginning of the session of the Congress which adopted it. Thus the Bill of Rights resolution is timed as of the "Congress of the United States, begun and held at the City of New York, on Wednesday, the fourth of March", 1789; its accurate date is given as September 25, 1789, the day when the Senate approved it. That resolution is undated in 1 Stat. 97 and others are erroneously dated in Statutes at Large according to the notes in the 1938 edition of *The Constitution of the United States, Annotated*, Sen. Doc. No. 372, 74th Cong., 2d sess. The dates there given are used here.

¹¹ The legislative record of the first 15 amendments may be found by consulting Ames' list as follows: 1st to 10th, No. 297; 11th, No. 321; 12th, No. 358; 13th, No. 985; 14th, No. 1140; 15th, No. 1284. The legislative record of the other amendments may be found in the "History of Bills" in the Index of *Congressional Record* volumes as follows: 16th, S. J. Res. 40, 61st Cong.; 17th, H. J. Res. 39, 62d Cong.; 18th, S. J. Res. 17, 65th Cong.; 19th, H. J. Res. 1, 66th Cong.; 20th, S. J. Res. 14, 72d Cong.; 21st, S. J. Res. 211, 72d Cong.

The texts of the joint resolutions embodying the 21 amendments are in *The Constitution of the United States. Literal Print* (Department of State Publication No. 599) and in the laws as follows: 1st-10th, 1 Stat. 97; 11th, 1 Stat. 402; 12th, 2 Stat. 306; 13th, 13 Stat. 567; 14th, 14 Stat. 358; 15th, 15

of the House of Representatives and of the President of the Senate,¹² and is without the approval of the President;¹³

3. The Secretary of State promptly transmits a certified copy of the resolution—formerly engrossed, now printed from the same type as the original—to the Governor of each state;¹⁴

Stat. 346; 16th, 36 Stat. 184; 17th, 37 Stat. 646; 18th, 40 Stat. 1050; 19th, 41 Stat. 362; 20th, 47 Stat. 745; 21st, 47 Stat. 1625.

¹² All resolutions have been signed by the Speaker of the House of Representatives and the President of the Senate, in that order. The Clerk of the House and the Secretary of the Senate attested the 6 resolutions of September 25, 1789, March 4, 1794, December 12, 1803, June 16, 1866, February 27, 1869 and July 12, 1909 embodying the 1st–10th, 11th, 12th, 14th, 15th, and 16th amendments. A certificate by one or other of those officials that the resolution originated in the Senate or House of Representatives has been added to the 7 resolutions of February 1, 1865 (Senate), July 12, 1909 (Senate), May 16, 1912 (House), December 17, 1917 (Senate), June 5, 1919 (House), March 2, 1932 (Senate) and February 20, 1933 (Senate), embodying the 13th, 16th, 17th, 18th, 19th, 20th and 21st amendments. The 16th amendment resolution (July 12, 1909) bore both the attestation and the certification.

¹³ Approval by the President was determined not to be requisite by *Hollingsworth v. Virginia*, 3 Dall. 378 [1798]. See *Journal of the Senate*, III, 323, for defeat by 7 to 23 votes of a motion of December 12, 1803 to present the proposal embodying the 12th amendment to the President for his approval; also speech by Senator Lyman Trumbull, February 7, 1865, *Congressional Globe*, 38th Cong., 2d sess., 629.

The joint resolution proposing what became the 13th amendment is signed "approved February 1, 1865, Abraham Lincoln." A Senate resolution of February 7, 1865 (*Senate Journal*, 38th Cong., 2d sess., 131–132) corrected without canceling this inadvertence and declared that the President's approval "was unnecessary to give effect to the action of Congress, . . . inconsistent with the former practice, . . . and should not constitute a precedent for the future." Previously, the proposal for amendment of calendar day March 4 (legislative day March 2), 1861, which failed of adoption, had been subscribed "approved March 2, 1861. James Buchanan." (Department of State, Publication No. 573, *Ratification of the Twenty-First Amendment to the Constitution of the United States*, 16, 22.)

¹⁴ The resolutions of September 25, 1789 and December 9, 1803, were, however, transmitted under the signature of the President in response to resolutions of Congress of September 26, 1789 (*Journal of the House*, I, 122; *Journal of the Senate*, 1, 90) and December 12, 1803 (*Journal of the House*, 4, 484; *Journal of the Senate*, 3, 323). President Washington instructed the Secretary of State to transmit copies of the resolution of March 4, 1794 (11th amendment) to governors. That circumstance led to the decision of

4. The respective governors transmit the resolution to the Legislatures¹⁵ in accordance with State legislation or practice¹⁶ respecting constitutional amendments;¹⁷

1798 in *Hollingsworth v. Virginia* (3 Dall. 378) of the Supreme Court that presentation for approval by the President was not requisite. The subsequent resolution asking the President to transmit the proposal of the 12th amendment, which related to presidential electors, was apparently due to the anxiety of Congress to hasten ratification so as to employ the new system in the election of November 6, 1804; the act of March 26, 1804 (2 Stat. 295), provided for the condition of adoption "on a date so near" election that uncertainty might rise as to which system was applicable to the choice of President. The amendment was certified as in force September 25, 1804.

The duty of the Secretary of State to transmit is derivative. The form used February 21, 1933 in transmitting the proposal embodying the 21st amendment requested governors to cause the joint resolution to be submitted in the several states "for such action as may be had and that a certified copy of such action be communicated to the Secretary of State, as required by Sec. 160, title 5, U. S. Code" (Department of State, *Press Releases*, February 25, 1933, 134).

¹⁵ Usually with a message.

¹⁶ State legislation controlling action on amendments by the legislatures has been deemed unnecessary in many jurisdictions. The ordinary rules of procedure are customarily regarded as sufficient. Instruments of ratification originate either with individual members or the appropriate committee. See, for instance, the details of procedure in Connecticut, Georgia, and Massachusetts in 1939, below, pp. 11-18.

The proposal of February 20, 1933 (21st amendment) provided for ratification by conventions and during that year 43 states enacted statutes with respect to that method. They are of varied forms. "Some are general, covering similar future cases; others are limited to the proposal then pending; and in respect of the methods of selection of delegates to the convention, of the apportionment (*e. g.*, "state-wide" or by districts), of the number of such delegates (*e. g.*, 3 in New Mexico, 329 in Indiana), of the dates of meeting, of instructions from the electorate, and of other matters, there is diversity of substance as among them." (*Ratification of the Twenty-First Amendment to the Constitution of the United States*, 5). Georgia, Kansas, Louisiana, Mississippi and North Dakota did not enact such statutes.

¹⁷ State legislatures in ratifying amendments to the Federal Constitution act, *quoad hoc*, as Federal agencies; their function transcends any limitation sought to be imposed by the people of a state. *Hawke v. Smith* (no. 1), 253 U. S. 221 [1920]; *Rhode Island v. Palmer* [National Prohibition Cases], 253 U. S. at 386 [1920]; *Leser v. Garnett*, 258 U. S. 130 [1922]. See also *Smiley v. Holm*, 285 U. S. 355, 365 [1932].

5. The state legislatures¹⁸ (or conventions) reach a conclusion upon the proposal within the terms of their own laws and procedure;¹⁹

6. Decisions of state legislatures to ratify, in the form of certified²⁰ acts or resolutions,²¹ are notified²² to the Secretary of State

¹⁸ The term "legislature" as used here means the deliberative, representative bodies, that make the laws for the people of the respective states; and (as to the ratification of the 19th amendment) the Ohio constitution in requiring a referendum is inconsistent with the Constitution. *Hawke v. Smith* (nos. 1 and 2), 253 U. S. 221, 231 [1920].

¹⁹ The composition of a legislature for the purpose of ratifying a proposal of amendment is determined by the state's parliamentary practice, and questions relative to such procedure are political. The Supreme Court was equally divided and expressed no opinion on the justiciability of the contention that the lieutenant governor of Kansas could be permitted to have a deciding vote on the ratification of the proposed child labor amendment. *Coleman et al. v. Miller et al.*, 307 U. S. 433, 446 [1939] and the separate views of Mr. Justice Frankfurter.

²⁰ The secretary of state of the state normally gives this authentication. Before 1798 the office of secretary of state was not created in some states and the officers of the legislatures authenticated the instruments. Only 6 of the 11 ratifications requisite to render the first 10 amendments valid were certified by a secretary of state or an equivalent officer.

Before 1800 there seems to have been a clear realization that the legislature of the state ratified and that the instrument consequently does not require the approval of the governor, who is not a part of the legislature. Approval by governors was frequent upon acts or resolutions ratifying the amendments from the 12th to the 20th, doubtlessly by unconscious assimilation to ordinary state legislations.

²¹ An analysis of 114 ratifications of the first 15 amendments shows 27 were acts of the legislature and 87 joint resolutions.

²² "The statute (U. S. Code, title 5, sec. 160) presupposes official notice to the Secretary of State when a state legislature has adopted a resolution of ratification." *Coleman et al. v. Miller et al.*, 307 U. S. 433, 451 [1939].

Of 60 early notifications, 49 were by governors, 9 by secretaries of state, 1 by a ranking member of the House of Representatives and 1 by an army officer (from Texas in 1865). Subsequently the governor has been the customary channel of notification.

The notification of ratification is not revokable. In *Chandler et al. v. Wise and Moss*, 307 U. S. 474 [1939], the Supreme Court held "that after the Governor of Kentucky had forwarded the certification of the ratification of the amendment to the Secretary of State of the United States there was no longer a controversy susceptible of judicial determination." This decision reversed the Court of Appeals of Kentucky in *Wise v. Chandler*, 270 Ky. 1

by the governor or the secretary of the state;²³ unless state law so provides, failure to ratify or rejection of the proposal may or may not be certified;²⁴

7. The amendment is "valid to all Intents and Purposes, as a part of" the Constitution when its ratification is consummated by that state which brings the total up to three fourths of all the states;²⁵

8. The Secretary of State under U. S. Code, Title 5, sec. 160,

[1937] where it was held that the governor's certification was of no effect since the ratification was void because the "child labor amendment" was no longer open to ratification by reason of lapse of time (13 years) and its previous rejection by more than one fourth of the states.

²³ A resolution of Congress of March 2, 1797 (1 Stat. 519) requested the President "to adopt some speedy and effectual means of obtaining information from the states of Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Tennessee and South Carolina, whether they have ratified the [11th amendment]; if they have, to obtain the proper evidences thereof."

The President in a message of January 8, 1798 declared the amendment ratified by three-fourths of the states. Three-fourths of the ratifications had been attained February 7, 1795. The uncertainty on that occasion led to sec. 2, act of April 20, 1818 (2 Stat. 306), which continues to control as U. S. Code, title 5, sec. 160; by making it the duty of the Secretary of State to receive ratifications, it implies an obligation of state authorities to transmit them.

²⁴ Rejection, failure to act, withdrawal of action taken and the effect of contrary decision by the same state are considered below, pp. 20-24.

²⁵ Department of State, *Press Releases*, February 11, 1933, 102; Mr. Justice Van Devanter in *Dillon v. Gloss*, *Deputy Collector of Internal Revenue*, 256 U. S. 368 [1921] as to the 18th amendment said: "Its ratification, of which we take judicial notice, was consummated on January 16, 1919. . . . The date of its consummation, and not that on which it is proclaimed, controls." This has been the general view of the courts. "It is the approval of the requisite number of states, not the proclamation that gives vitality to the amendment." *Widenmann v. Colby*, 265 Fed. 998, 1,000 [1920].

There is usually a difference in time between the date of an amendment becoming a part of the Constitution and the publication of the certificate, due to mail communication. The 20th amendment was valid January 23, 1933, by reason of Colorado's ratification, but the certificate was issued on February 6, when certified copies of three more states were included. In the case of the 21st amendment, three "official notices" telegraphed on December 5 enabled the Acting Secretary of State to issue the certificate on the same day in 1933.

is obliged to know what number of states constitutes three fourths of the total so as to determine when he has received "official notice"²⁵ that a proposed amendment "has been adopted, according to the provisions of the Constitution";

9. When the requisite number of ratifications is received, "the Secretary of State shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution."²⁷

2. PROPOSALS BEFORE THE STATES

Of the nine steps in the disjunctive process of amending the Constitution set forth above, the three which concern the states of the Union are those upon which the whole process depends. Aside from the initial step of producing a proper proposal in the Congress—which is itself a decision of the elected representatives of the states—all the other steps are procedural. Of the three functions falling to the states, only the second is primary. As already formulated these three functions are:

The respective governors transmit the resolution to the Legislatures in accordance with State legislation or practice respecting constitutional amendments;

The state legislatures (or conventions) reach a conclusion upon the proposal within the terms of their own laws and procedure;

Decisions of state legislatures to ratify, in the form of certified acts or joint resolutions, are notified to the Secretary of State by the governor or the secretary of the state; unless state law so provides, failure to ratify or rejection of the proposal may or may not be certified.

The decision of the state legislature (or convention) is an exercise, by designated representatives, of the sovereign will of the people of the state, who simultaneously are nationals of the

²⁵ Such notice from a state is conclusive upon the Secretary of State, *Leser v. Garnett*, 258 U. S. 130 [1922]; and he has no discretion to determine the truth of the facts stated, *United States ex rel. Widenmann v. Colby, Secretary of State*, 265 Fed. 998 [1920], 49 App. D. C. 358, writ of error dismissed, 257 U. S. 619 [1922].

²⁷ U. S. Code, title 5, sec. 160.



Lincoln Lore

Bulletin of The Lincoln National Life Foundation . . . Dr. R. Gerald McMurtry, Editor
Published each month by The Lincoln National Life Insurance Company, Fort Wayne, Indiana

Number 1604

FORT WAYNE, INDIANA

October, 1971

LINCOLN NEED NOT HAVE SIGNED THE RESOLUTION SUBMITTING THE THIRTEENTH AMENDMENT TO THE STATES

Editor's Note: *Lincoln Lore*, Number 1427, January, 1957, contains a short article (pages 3-4) entitled "The Thirteenth Amendment 'A king's cure for all the evils.'" This article is reprinted (with certain alterations and additions) to serve as an introduction concerning the Thirteenth Amendment in general and the arguments presented by Senator Lyman Trumbull of Illinois, Senator Reverdy Johnson of Maryland and Senator Timothy O. Howe of Wisconsin, in particular, in regard to President Lincoln's signature on the resolution submitting the Thirteenth Amendment to the States. The article follows:

THE THIRTEENTH AMENDMENT

"A king's cure for all the evils"

During Abraham Lincoln's lifetime he did not witness the enactment of a Constitutional Amendment. While he did sign the Joint-Resolution on February 1, 1865 (two-thirds of both houses concurring) which was submitted to the legislatures of the several states proposing the Thirteenth Amendment, his signature was unnecessary and he died before December 18, 1865 when three-fourths of the States had ratified the amendment.

The Thirteenth Amendment was passed by the 38th Congress during the Second Session. The Senate initiated the resolution in April 1864, and without any difficulty approved it with a vote of 38 to 6. The House of Representatives, while rejecting the resolution, on June 15 with a vote of 95 to 66 (not a two-thirds vote), met the issue on January 31, 1865 with a vote of 119 yeas and 56 nays (8 members not voting).

As President, it had been Lincoln's custom to approve resolutions and Acts of Congress, but such procedure was unnecessary in amending the Constitution. In fact, on February 7, the Senate fearing lest a wrong precedent be set, passed a resolution asserting that presidential approval was unnecessary. Before this action was taken, however, Lincoln had inscribed the document "Approved February 1, 1865."

Senator Lyman Trumbull, in an address printed in the *Congressional Globe*, February 7, 1865, pp. 629-31, cited a Supreme Court case dating back to 1798 which declared that the president had no authority to approve or disapprove of a proposition submitted for adoption as an amendment to the Constitution. Trumbull did not want inadvertent approval in this instance to be considered a precedent because a future

president could defeat an amendment by pocket veto.

Article XIII, Section 1, of the Amendment Resolution follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Section 2 follows: "Congress shall have power to enforce this article by appropriate legislation."

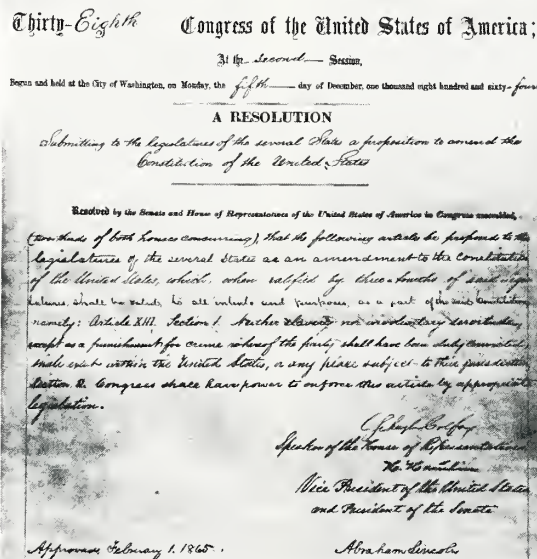
The original document is a printed form with the appropriate words filled in by a clerk. Its phraseology

is essentially that of the Ordinance of 1787, repeated in the Missouri Compromise and the Wilmot Proviso. The document also bears the signatures of Schuyler Colfax, Speaker of the House of Representatives, and H. Hamlin, Vice President of the United States and President of the Senate. There are also several engrossed copies extant bearing the signatures of the President, Vice President and Speaker of the House, along with the signatures of members of the Senate and House of Representatives.

Apparently many people thought that Lincoln's signature was necessary to validate the Thirteenth Amendment resolution, and after he had affixed his signature to the document he was honored with a serenade. To this group of admirers he made a brief address. Lincoln stated that, "The occasion was one of congratulation to the country and to the whole world. But there is a task yet before us—to go forward and consummate by the votes of the States that which Congress so nobly began yesterday." Lincoln expressed the belief that "all would bear him witness that he had never shrunk from doing all that he could to eradicate slavery by issuing an emancipation proclamation."

In his response to the serenaders Lincoln admitted that his Emancipation Proclamation "falls far short of what the

Amendment will be when fully consummated." Then too, he said, a question might be raised whether the proclamation was legally valid. He knew that it would be declared that it did not meet the evil. But Lincoln continued, "this amendment is a king's cure for all the evils. It winds the whole thing up."



From the National Archives

The original resolution approved by Lincoln was a printed form with blanks filled in by a clerk. Engrossed copies bearing the signatures of Colfax, Hamlin, Lincoln and members of the Senate and House are to be found in private and institutional collections.

Lincoln was in a genial mood on February 1, 1865, and "he could not but congratulate all present, himself, the country and the whole world upon this great moral victory."

The President was pleased that his own State of Illinois had taken the lead in ratifying the amendment. Governor Richard J. Oglesby telegraphed Lincoln on February 1 that the Illinois Legislature had approved the amendment and Lincoln informed his serenading friends "that Illinois had already to-day done the work."

Rhode Island and Michigan ratified the amendment on February 2, followed by Maryland, New York and West Virginia on February 3. By the end of February, Missouri, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Louisiana, Indiana, Nevada, Minnesota and Wisconsin had "done the work." Vermont ratified in March. Early in April, Tennessee and Arkansas ratified (the latter on April 14, 1865) thus making a total of twenty-one states ratifying the amendment before Lincoln's assassination. Connecticut ratified in May, New Hampshire in June, South Carolina in November, Alabama, North Carolina, Georgia, Oregon, California and Florida in December. (Florida again ratified the amendment on June 9, 1868, upon its adoption of a new constitution.) Iowa ratified in January, 1866, followed by New Jersey the same month (the latter having rejected the amendment in March, 1865). Texas ratified in February, 1870, and Delaware on Lincoln's birthday, February, 1901 (after having rejected the amendment in February, 1865). The amendment was rejected by Kentucky in February, 1865, and by Mississippi in December, 1865.

Ratification was completed on December 6, 1865, when the legislature of the twenty-seventh State (Georgia) approved the amendment, there being then 36 States in the Union. On December 18, 1865, Secretary of State Seward certified that the thirteenth amendment had become a part of the Constitution.

Slavery as an institution had been in the process of rapid disintegration throughout the early 1860's. While about 200,000 slaves had gained their independence under the Emancipation Proclamation up to February, 1865, nearly 1,000,000 were still in bondage when the Thirteenth Amendment was introduced.

Certainly no man had a better right to sign his name to the Thirteenth Amendment resolution than Abraham Lincoln, even though his presidential approval was not a legal requirement. His signature on this particular document again dramatically presented his "oft-expressed personal wish that all men everywhere could be free."

In his arguments before the Senate on the question of Constitutional Amendments, Trumbull quoted Mr. Charles Lee, Attorney General (1795-1801) and Justice Samuel Chase (1796-1811) to bolster his contention that the President should not sign an amendment to the Constitution. The debate as it appears in *The Congressional Globe*, February 7, 1865, pages 629-631 follows:

Constitutional Amendment

The Senate accordingly proceeded to the consideration of the following resolution, which was submitted by Mr. Trumbull on the 4th instant:

Resolved, That the article of amendment proposed by Congress to be added to the Constitution of the United States, respecting the extinction of slavery therein, having been inadvertently presented to the President for his approval, it is hereby declared that such approval was unnecessary to give effect to the action of Congress in proposing said amendment, inconsistent with the former practice in reference to all amendments to the Constitution heretofore adopted, and being inadvertently done, should not constitute a precedent for the future; and the Secretary is hereby instructed not to communicate the notice of the approval of said proposed amendment by the President to the House of Representatives.

Mr. TRUMBULL. Since the Government was formed several amendments to the Constitution of the United States have been proposed by Congress and adopted by the States. They were all proposed at three different times; the first series of ten amendments was proposed in 1789; the eleventh amendment was proposed in 1794, and the twelfth amendment in 1803. The Constitution of the United States declares that "the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution," which being ratified in the manner prescribed shall become a part thereof; and the amendments which have been

heretofore adopted have been adopted under this clause of the Constitution authorizing Congress to propose amendments, and those proposed amendments have never been presented to the President of the United States for his approval. The clause of the Constitution which declares that "every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States;" and the clause that requires "every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment)," to be "presented to the President of the United States" for his approval, are not applicable to the proposal of amendments to the Constitution. Those clauses of the Constitution requiring the approval of the President to the bills which pass Congress and to the resolutions which pass both Houses, have reference to ordinary legislative proceedings; and hence, when amendments were proposed in 1789, 1794, and 1803, they were not presented to the President for his approval.

I have before me a statement prepared by the Chief Clerk of the Senate, of the different amendments which have been adopted, and the manner in which they were adopted, from which the fact I have stated will appear. The question was raised distinctly in 1803 in the Senate of the United States on a motion that the then proposed amendment should be submitted to the President:

"On motion that the Committee on Enrolled Bills be directed to present to the President of the United States for his approbation the resolution which has been passed by both Houses of Congress proposing to the consideration of the State Legislatures an amendment to the Constitution of the United States respecting the mode of electing President and Vice President thereof, it was passed in the negative—yeas 7, nays 23."

On a distinct vote 23 to 7 voted that the Committee on Enrolled Bills should not present the proposed amendment to the President of the United States for his approval, and it was not presented to or approved by him. In 1798 a case arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel in argument before the Supreme Court insisted that the amendment was not valid, not having been approved by the President of the United States. This was his argument:

"The amendment has not been proposed in the form prescribed by the Constitution, and therefore it is void. Upon an inspection of the original roll, it appears that the amendment was never submitted to the President for his approbation. The Constitution declares that 'every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives,' &c. (Article one, section seven.) Now, the Constitution likewise declares that the concurrence of both Houses shall be necessary to a proposition for amendments. (Article five.) And it is no answer to the objection to observe that as two thirds of both Houses are required to originate the proposition, it would be nugatory to return it with the President's negative to be repassed by the same number, since the reasons assigned for his disapprobation might be so satisfactory as to reduce the majority below the constitutional proportion. The concurrence of the President is required in matters of infinitely less importance, and whether on subjects of ordinary legislation or of constitutional amendments the expression is the same, and equally applies to the act of both Houses of Congress."

Mr. Lee, the Attorney General, in reply to this argument, said:

"Has not the same course been pursued relative to all the other amendments that have been adopted? And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of investing the President with a qualified negative on the acts and resolutions of Congress."

The court, speaking through Chase, Justice, observes:

"There can surely be no necessity to answer that argument. The negative of the President applies only to

the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution."

The court would not hear an argument from the Attorney General on the point, it was so clear. If the approval of the President were necessary, none of the amendments which have been made to the Constitution since its adoption would be valid, for not one of them ever received his approval.

I ought to state, perhaps, that three or four years ago, when Congress passed a proposition to amend the Constitution by a two-thirds vote, it was inadvertently presented to the President for his approval, just as the one passed a few days ago was presented; but that amendment has never been acted upon by the States, and it ought not to form a precedent. The object of the resolution which I have introduced is to prevent the inadvertent approval in this instance being considered as a precedent hereafter; so that it shall not be in the power of any future President by pocketing, if you please, an amendment proposed by both branches of Congress by the constitutional majority, to defeat it. I think it important that the precedent should be right. The resolution also instructs the Secretary not to inform the House of Representatives that the President has approved the proposed amendment. His approval of it can do no harm, but it is not a necessity, and it having been inadvertently presented for his approval, the Senate ought so to declare lest a wrong precedent be set.

Mr. HOWE. As I was the instrument of the Senate who took this resolution to the President, perhaps the Senate will indulge me in a single word on the matter.

The bulk of the precedents are against the propriety of that step, as has been stated by the Senator from Illinois. There is a judgment of the Supreme Court of the United States declaring that the assent of the President is not necessary to a resolution of this kind. That is the authority for dispensing with the assent of the President. Nevertheless, to my understanding, the express language of the Constitution requires the assent of the President just as much to a resolution of this kind as to any other. It does not require the assent of the President to a vote for adjournment, and that is the only exception. The Constitution declares that —

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

All legislative powers are vested in a Congress, and we are expressly told of what the Congress consists. If you will look to see what Congress may do, in the eighth section of the first article you are told that the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to borrow money, to establish a uniform rule of naturalization, &c. The Congress may do these things. That is precisely the tribunal, in precisely the words, which is authorized in a subsequent clause of the Constitution to propose amendments to that instrument. It is the Congress that may propose amendments; it is the Congress that may raise armies; and the Congress consists of a Senate and House of Representatives. Now, how does it happen that any bill or any resolution must go to the President for his signature? Because there is a distinct clause in the Constitution which provides that —

"Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States."

He is not a part of the Congress, and all legislative powers are vested in the Congress; nevertheless, you cannot have a law unless you have presented the bill previously to the President. Not only that, but another clause of the Constitution requires that —

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed"—

Not passed, but repassed—
"by two thirds of the Senate and House of Representa-

tives, according to the rules and limitations prescribed in the case of a bill."

If this language applies to any one resolution requiring the concurrent vote of the two Houses it applies to every one, for it says every one. So much for the express letter of the Constitution itself.

The Senator from Illinois, however, says — and in that he is borne out by the judgment of the Supreme Court, or at least he is borne out by the language of Justice Chase, formerly a member of that court — that this provision which I have just read only applies to the ordinary acts of legislation. It cannot be disputed that Justice Chase so said, and the court having concurred with him perhaps we are bound to consider the law settled upon that point. Not a reason was assigned for it; and the argument which was made by the counsel in that case against the validity of the amendment adopted was not answered either by the opposing counsel or by the court; nor have I heard it answered by any one. Justice Chase remarked, indeed, that argument was not necessary upon a point of that kind. In the vote which was taken in the Senate of the United States in 1803 I notice among the names of those who voted for presenting the resolution to the President the names of Mr. John Quincy Adams and Mr. Pickering. I think, with all deference to Justice Chase, that when such gentlemen as Mr. Adams and Mr. Pickering have affirmed that a step is necessary, some argument may fairly be offered to show that it is not necessary.

This resolution says that the resolution proposing an amendment to the Constitution was inadvertently presented to the President, and the aim of the resolution is to prevent its being made a precedent; but the Senator from Illinois has told us correctly that the precedent has already been established. In 1861 an amendment was agreed to by both Houses and was submitted to the President for his approval; and I have yet to learn that any member of either House of Congress entered any protest to that form of procedure. The President did approve it. The Senator from Illinois says it ought not to be considered a precedent because the Legislatures of the States did not adopt the amendment. How that can make it more or less of a precedent I do not understand. The two Houses concurred in the resolution; the organs of the Houses presented it to the President, and he approved it; and so your records show; and there is the precedent. If this resolution passes without dissent on the part of Congress it will be but another precedent. Precedents, I take it, cannot override the Constitution itself. The approval of the President will not do any hurt if the Constitution does not require it. My own judgment is that the express language of the Constitution does demand it, and my own judgment is that propriety sanctions it; that it is proper to present it to the President; for it does not follow, if the President dissents and presents his objections to the two Houses, that the vote of two thirds of each House can be again had to repass the resolution.

But assuming that the Constitution does not require the President's assent to such a resolution, and assuming that the resolution was inadvertently presented to the President, the resolution now pending declares that it was unnecessary to present it to him. I do not think that follows, even if the premises are as stated; for if it had not been presented to the President, I ask you, sir, and I ask the Senate, how would it have been transmitted to the Legislatures of the States? Your resolution proposing the amendment provided no means, and there has been no other action taken on the part of the two Houses to get it to the States. It would not go to the State Department unless presented to the President. When presented to the President, if he approves it he transmits it to the State Department; and being transmitted to the Secretary of State, he transmits it to the Legislatures of the States. I think I am abundantly authorized to say that but for this very action of the Committee on Enrolled Bills, which your resolution says was not necessary, the resolution proposing this amendment to the Constitution would not have reached the Legislature of a single State probably until this time. If it had, I do not know how it could have got there, or who would have sent it there. You took no steps whatever to send it there. It certainly would never have got there until after, under the procedure which was adopted,

many of the States had actually ratified the amendment. If it be the established law that these resolutions should not go to the President for his assent, certainly the two Houses which pass them ought to take some measures to execute them, and to get them before the State Legislatures.

I am free to confess that when I presented this resolution to the President I did so in pursuance of what is a mere habit, so to speak; I did not stop to distinguish between this and any other resolution. I had not looked into the precedents; I had not looked into the Constitution. Since my attention has been called to it I have looked into the precedents; I have looked into the Constitution; and as I have already said, my judgment is satisfied that the course taken was right, notwithstanding the authority which has been read goes so far against it.

Mr. JOHNSON obtained the floor.

Mr. TRUMBULL. If the Senator from Maryland will allow me, I desire to refer to the rule of the Senate on this subject. I omitted to do so when I was up before. One of the special rules of the Senate also shows that these constitutional amendments are not to be submitted to the President. The 26th special rule of the Senate declares:

"And all resolutions proposing amendments to the Constitution, or to which the approbation and signature of the President may be requisite, or which may grant money out of the contingent or any other fund, shall be treated in all respects, in the introduction and form of proceedings on them, in the Senate, in the same manner with bills."

Showing by irresistible inference that resolutions proposing amendments to the Constitution are not required to be submitted to the President for his signature; because the language is —

"And all resolutions proposing amendments to the Constitution, or to which the approbation and the signature of the President may be requisite," &c.

Mr. JOHNSON. It would be very improper to say that the question which is presented by the resolution offered by the honorable member from Illinois, if it was an original question, would be entirely free from doubt, not only because the honorable member from Wisconsin thinks differently, and has expressed a different opinion upon it, but because there were some six or seven Senators, in 1803, I think, who entertained a different opinion. But, to my mind — with due respect to the authority of my friend from Wisconsin — it seems to be quite clear that a resolution proposing an amendment to the Constitution is not to be submitted to the President for his approval. The object of the constitutional provision on the subject is simply to initiate a mode by which the people shall decide whether there shall be an amendment of the Constitution or not. It does not operate as a law. The whole effect of it is, if it is initiated by Congress, to submit the question to the people for their determination; and the Senate, of course, will have seen that that is but one way in which amendments are to be proposed. Precisely the same effect is given to amendments proposed by the Legislatures of the States. I suppose it will hardly be contended that the President has any control over a convention called by two thirds of the State Legislatures.

What makes it, as I think, still more obvious that it was not the purpose of the Convention that framed the Constitution that the President should decide upon a resolution of this description is, that the resolution itself is not to be passed unless it is concurred in by two thirds of each House. The constitutional provision which gives to the President the authority to veto any such bill as is to be submitted to him for approval or rejection says that if he disapproves, he is to send it to the House in which the bill or resolution originated, and if passed by that House and the other by two thirds it is to become a law notwithstanding the veto. You are not to construe these provisions, therefore, literally where they come in conflict with each other, but you are to construe them in relation to the subject-matter with which they deal. By looking at the provision upon which my honorable friend from Wisconsin relies, you find that —

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States."

The clause immediately preceding says:

"If he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House it shall become a law."

Now, as such a resolution as the one in question is a resolution which cannot be passed by either House except by a vote of two thirds, why should it become necessary to submit that to the President for his decision; for, after he decides, there is but one provision looking to what is to be done in consequence of his decision against the resolution, and that is that it is to be passed by two thirds; so that if this resolution was sent to the President for his approval, and he rejects it, and it comes back, it will just be precisely the same vote.

Mr. HOWE. It does not follow that it will get the same vote after Congress has heard the President's objections.

Mr. JOHNSON. I know it does not; but what I mean to say is, that looking at the two provisions — that is to say, the provision which gives the President the right to approve or disapprove, and the provision which looks to the duty of Congress consequent upon his disapproval — it is evident that what was intended to be submitted to the President was a question which was to be passed upon by more votes than were necessary before it was submitted. Then the provision is:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution" * * * * "which" * * * * "shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof."

Now, the proposition is that no proposal by Congress of an amendment to the Constitution, although receiving the support of two thirds of both Houses of Congress, is to be submitted to the States, unless the President shall approve it. That is not the case in relation to the other mode of proposing amendments. There being two modes, and stated in the alternative, the other mode is:

"Or, on the application of the Legislatures of two thirds of the several States."

What are Congress to do then? Suppose two thirds of the States propose amendments, has the President anything to do with that? All will admit that he has not. Has Congress anything to do with that? All will admit that their single duty then is—an imperative duty—to call a convention. So that the whole object of the clause, as it seems to me, is merely to begin a mode by which the people shall have an opportunity of deciding whether the Constitution shall be amended or not. But when, as is stated by the honorable chairman of the Judiciary Committee, every amendment which has been adopted has been submitted to the States without having been approved by the President, and when the Supreme Court, at a time when it stood as high as it has ever stood at any time since its organization, refused even to hear an argument on the subject, supposing it to be too clear for discussion, it would seem to me that we ought to consider the question as settled; and in order that it may be considered as settled, that it is advisable to take the particular case which is before us (where the amendment has been submitted to the President for his approval without at the time, as my friend admits, due consideration or any consideration, taking it for granted it was to go to him for approval) out of the way as a precedent.

The resolution was agreed to.

"A Resolution,"

submitting the Thirteenth Amendment to the States. Printed document signed, completed in manuscript, dated February 1, 1865, 1 page.

The Emancipation Proclamation of January, 1863, declared free only those slaves in the rebellious states of the Confederacy. By the end of the war, no provision or law existed concerning the freedom of slaves owned by those who had been loyal to the Union. The legal status of the institution of slavery was by no means resolved, and it was generally recognized that an amendment to the Constitution was necessary to clarify the legality of what was a reality in practice. Various proposals for constitutional amendments had been offered in Congress even before the issuance of the Emancipation Proclamation. The final form of the resolution that was to become the Thirteenth Amendment was based almost word for word on the slavery prohibition embodied in the Northwest Ordinance of 1787. This resolution, as submitted by Lyman Trumbull of Illinois, chairman of the Judiciary Committee, was passed in the Senate on April 8, 1864, by a vote of 38 to 6. When the resolution reached the House on June 15, 1865, it failed to secure the requisite two-thirds vote, but after the re-election of President Lincoln in November of that year, it passed the House on January 31, 1865, by the narrow vote of 119 to 56 (8 representatives abstaining). The amendment was eventually ratified by three-fourths of the states, including eight that had formerly belonged to the Confederacy, and was declared adopted on December 6, 1865.

This copy of the resolution is signed by President Lincoln, Vice-President Hannibal Hamlin, and Speaker of the House, Schuyler Colfax, and is attested to by the signatures of John W. Forney, Secretary of the Senate, and Edward McPherson, Clark of the House. This copy is one of at least four known copies, and other signed copies may be in existence. The University's copy is probably unique in that the name of Hamlin is above that of Colfax, which comes first on other copies. The copy was reportedly discovered in a New Hampshire farm house attic in 1928 and was sold by Goodspeed's Bookshop in Boston to the Lincoln collector, Frank Tallman.

Gift of the Wilmington Institute Free Library

[Next](#)[Previous](#)[Index](#)[Contents](#)



AMERICAN TREASURES OF THE LIBRARY OF CONGRESS

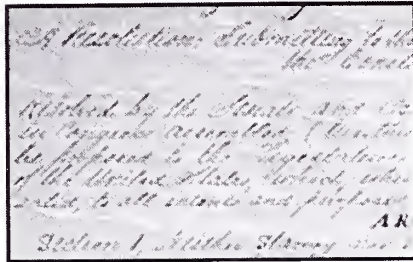
Reason



[Home](#) - [Overview](#) - [Treasure Talks](#) - [Object Checklist \(Current\)](#) - [Credits](#)
Exhibition Sections: [Top Treasures](#) - [Memory](#) - [Reason](#) - [Imagination](#)

[◀ PREVIOUS OBJECT](#)[* BACK TO EXHIBIT CASE *](#)[NEXT OBJECT ▶](#)

Abolition of Slavery



Resolution, 38th Congress of the U.S. submitted to the Legislatures of the Several States a proposition to amend the Constitution, signed Feb. 1, 1865 by Abraham Lincoln, signed in the Senate, April 8, 1864, signed in the House of Representatives, January 31, 1865

Holograph document, February 1, 1865

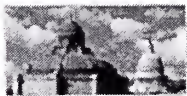
Manuscript Division

Gift of Robert Todd Lincoln, 1923 (100)

The Thirteenth Amendment, which formally abolished slavery in the United States, passed the House of Representatives after easy passage in the Senate on January 31, 1865. On February 1, President Abraham Lincoln approved the Joint Resolution submitting the proposed amendment to the state legislatures. This unusual engrossed copy of the resolution on vellum is signed by Lincoln as well as the authenticating officers of Congress and the senators and representatives who voted for its passage.

[◀ PREVIOUS OBJECT](#)[* BACK TO EXHIBIT CASE *](#)[NEXT OBJECT ▶](#)

[Home](#) - [Overview](#) - [Treasure Talks](#) - [Object Checklist \(Current\)](#) - [Credits](#)
Exhibition Sections: [Top Treasures](#) - [Memory](#) - [Reason](#) - [Imagination](#)
[Exhibitions Home Page](#) - [Library of Congress Home Page](#)



Library of Congress

Contact Us (November 20, 2002)

Thirty-Eighth Congress of the United States.

At Washington, Submitting to the Legislature of the several States a proposition to amend
the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (Two thirds of both Houses concurring) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three fourths of said Legislatures shall be valid, to all intents and purposes as a part of the said Constitution, namely:

ARTICLE XIII

Section 1. Within Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

2/11/44

Secretary of the Senate

Wm. H. Kimball, Vice President of the United States
and President of the Senate

Chlorophyll + 27.5% + 1.5% + 1.5% + 1.5%

Adopted February 1, 1965. Mrs. Ann Lincoln

U. S. Senate, April 8, 1864.

[The following page contains a large number of names, mostly illegible due to fading and handwriting.]

THE GILDER LEHRMAN
INSTITUTE of AMERICAN HISTORY

[Print This Page](#)

Transcripts

GLC 263

Abraham Lincoln. Document signed: Washington, Thirteenth amendment resolution, on vellum, 1864 Apr. 8 - 1865 Feb. 1. 1 p.

Thirty-Eighth Congress

of the United States of America at the second session begun and held at the City of Washington, on Monday, the fifth day of December, one thousand eight hundred and sixty-four

A Resolution

submitting to the legislatures of the several states a proposition to amend the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring.) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States which, when ratified by three-fourths of said legislatures, shall be valid to all intents and purposes, as a part of the said Constitution, namely:

Article XIII.

Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

I certify that this Resolution originated in the Senate.

J. W. Forney, Secretary

Schuyler Colfax

Speaker of the House of Representatives

H. Hamlin

Vice President of the United States and President of the Senate

Attest. E. McPherson

Clerk of the House of Representatives

Approved February 1 A.D. 1865. Abraham Lincoln

In the Senate April 8, 1864

1. S. C. Pomeroy	11. Lyman Trumbull		
2. W. T. Willey	12. L. F. S. Foster		
3. H. S. Lane	13. Solomon Foot	21. J. Collamer	28. Edgar Cowan
4. L. M. Morrill	14. Jn C. Ten Eyck	22. B. F. Wade	29. John P. Hale
5. J. W. Nesmith	15. James Dixon	23. J. B. Henderson	30. B. Gratz Brown
6. J. R. Doolittle	16. J. H. Lane	24. Ira Harris	31. J. M. Howard
7. Reverdy Johnson	17. Alex. Ramsey	25. Wm Sprague	32. H. B. Anthony
			36. Timy. O Howe
			37. James W. Grimes

8. P. C. Van Winkle	18. Jas. Harlan	26. Charles Sumner	33. John Conness
9. M. S. Wilkinson	19. E. D Morgan	27. L. M. Morrill	34. Henry Wilson
10. Z. Chandler	20. Daniel Clark		35. John Sherman

In the House of Representatives January 31, 1865.

	Schuyler Colfax	Henry G. Worthington	Thaddeus Stevens	Alex. H. Rice
Isaac N. Arnold	Henry C. Deming	E. R. Eckley	Justin S. Morrill	Amasa Cobb
J. F. Driggs	Fredck E. Woodbridge	Wm. Higby	N. B. Smithers	J. M. Broomall
Luc. Anderson	Cornelius Cole	D. W. Gooch	Theodore M. Pomeroy	C. T. Hulburt N.Y.
J. M. Marvin	John D. Baldwin	Portus Baxter	W. B. Washburn	R. B. Van Valkenburgh
J. A. Garfield	Wm. B. Allison	F. W. Kellogg	A. W. Hubbard	Francis Thomas
Oakes Ames Mass.	E Dumont	Rufus P. Spalding	Chas. O'Neill	J.W. Patterson N. H.
H. Price	Geo. S. Boutwell	Jesse O. Norton	H. W. Tracy	John A. Kasson
E. C. Ingersoll	S. Hooper	John B. Steele	Jno. W. Longyear	E. C. Washburne Ill.
H. L. Dawes	M. Russell Thayer	Thomas D. Eliot	James T. Hale	Sidney Perham
John H. Rice	A. Myers Pa.	Wm. D. Kelley	D. Morris N.Y.	Wm. G. Brown W. Va.
F. C. Beaman	J. M Ashley	D. C. Littlejohn	John H. Hubbard	J. F. Farnsworth
Sempronius H. Boyd	T. A. Jenckes	Nathan F. Dixon R. I.	A. C. Wilder	Kan. S. F. Miller N.Y.
James F. Wilson	I. C. Sloan	Orlando S. Kellogg	Chas. Upson	Henry T. Blow
F. Clarke	J. W. McClurg	Leonard Myers	John A. Griswold	Thos. T. Davis N. Y.
Jno R. McBride	Thom Williams Pa.	Edwin H. Webster	Aug. C. Baldwin	Wm. Windom
James E. English	Ignatius Donnelly	A. McAllister	Godlove S. Orth	W. H. Randall
Augustus Frank	Fred A Pike	Giles W. Hotchkiss	E. H. Rollins	K. V. Whaley
Samuel Knox	Benjn. F. Loan Mo.	T. B. Shannon	M. F. Odell	Anson Herrick N.Y.
John B Alley Ma	Geo. H. Yeaman	J. G. Blaine	G. W. Scofield	A. H. Coffroth
Augustus Brandegee	J. B. Grinnell Iowa	W. A. Hutchins	Ezra Wheeler	Jacob B. Blair
	G. Clay Smith	J. K. Moorhead Pa.	H. A. Nelson	H. Winter Davis
		Austin A. King	Joseph Baily	Rbt C. Schenck

Notes: Basler 8: 253-254. Rhodehamel-Kaller # 9 ('Congressional Copy'). GLC 263 is one of twelve souvenir copies signed by Lincoln. Lincoln is the only president to ever have signed a constitutional amendment resolution. Similar to GLC 1206, a 'Senate Copy,' which is partially printed. Of Senators who voted for the Amendment Resolution, only two did not sign this copy: William Pitt Fessenden and B. F. Harding. (L. M. Morrill has signed twice.) Of Congressmen who voted for the Resolution only nine did not sign this copy: James S. Rollins, George W. Julian, John A. J. Creswell, William Radford, John F. Starr, Walter D. McInloe, Ambrose W. Clark, Amos Myers and John Ganson.

13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)

The 13th amendment, which formally abolished slavery in the United States, passed the Senate on April 8, 1864, and the House on January 31, 1865. On February 1, 1865, President Abraham Lincoln approved the Joint Resolution of Congress submitting the proposed amendment to the state legislatures. The necessary number of states ratified it by December 6, 1865. The 13th amendment to the United States Constitution provides that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

In 1863 President Lincoln had issued the Emancipation Proclamation declaring "all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free." Nonetheless, the Emancipation Proclamation did not end slavery in the nation. Lincoln recognized that the Emancipation Proclamation would have to be followed by a constitutional amendment in order to guarantee the abolishment of slavery.

The 13th amendment was passed at the end of the Civil War before the Southern states had been restored to the Union and should have easily passed the Congress. Although the Senate passed it in April 1864, the House did not. At that point, Lincoln took an active role to ensure passage through congress. He insisted that passage of the 13th amendment be added to the Republican Party platform for the upcoming Presidential elections. His efforts met with success when the House passed the bill in January 1865 with a vote of 119–56.

With the adoption of the 13th amendment, the United States found a final constitutional solution to the issue of slavery. The 13th amendment, along with the 14th and 15th, is one of the trio of Civil War amendments that greatly expanded the civil rights of Americans.

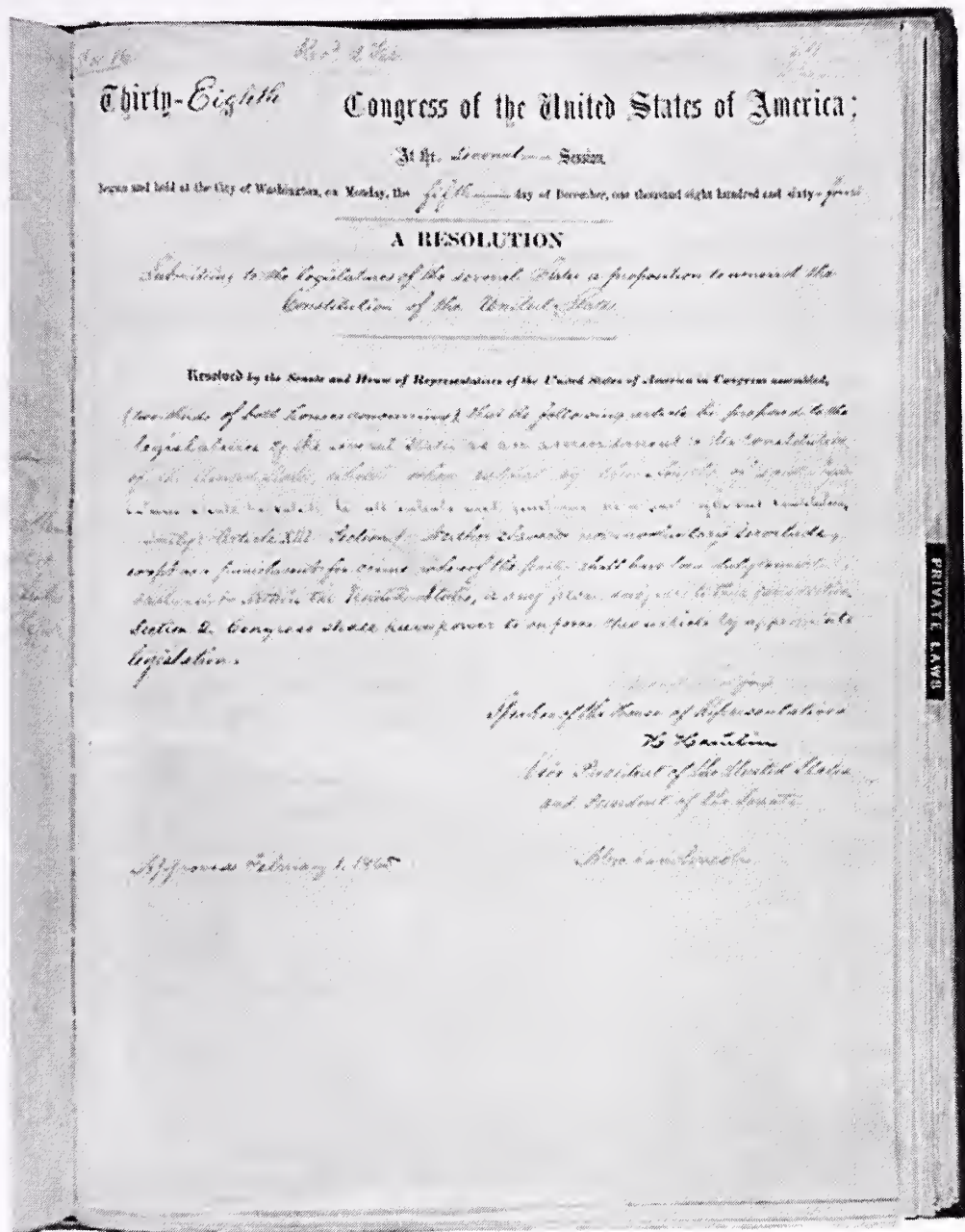
Page URL: <http://www.ourdocuments.gov/doc.php?doc=40>

U.S. National Archives & Records Administration

700 Pennsylvania Avenue NW, Washington, DC 20408 • 1-86-NARA-NARA • 1-866-272-6272

13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)

Document Image



close window

WBBM 780 - Chicago's #1 source for local news, traffic and weather**145-Year-Old Lost Lincoln Letter Discovered**

RALEIGH, N.C. (CBS 2) -- Researchers have made an amazing discovery in North Carolina.

They found a 145-year-old lost letter written by Abraham Lincoln, showing that before he pushed to abolish slavery, he sent letters to each state governor seeking to prevent slavery from being outlawed.

The letter was discovered in the Illinois state archives, and it is one of five such letters known to exist. It is now on display in Raleigh, N.C.

Lincoln wrote to the governors of each state before the Civil War, encouraging them to ratify a proposed 13th amendment to the constitution, proposed by Rep. Thomas Corwin of Ohio, which would have guaranteed and protected slavery in states where it was already permitted.

But the Civil War prevented the states from making the amendment valid.

Later, Lincoln pushed to end slavery in every state, and the change to the Constitution that did become the 13th Amendment abolished slavery in all legal institutions.

Rep. Corwin's proposed 13th amendment became called "The Ghost Amendment," and in 1963, a group of Texas lawmakers tried unsuccessfully to ratify it. A movement is now underway for Congress to officially retract the proposal.

CBS affiliate WRAL-TV contributed to this report.

© MMVI, CBS Broadcasting, Inc. All Rights Reserved.

[Print Current Page](#)

SECTION 2. Congress shall have power to enforce this article [783.2]
by appropriate legislation.

The **thirteenth amendment**⁷ was ratified by the several State legislatures on the following dates: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Pennsylvania, February 8, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Louisiana, February 15 or 16, 1865; Indiana, February 16, 1865; Nevada, February 16, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865 (date on which it was "approved" by Governor); Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, June 30, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865 (date on which it was "approved" by Provisional Governor); North Carolina, December 4, 1865; Georgia, December 6, 1865; Oregon, December 11, 1865; California, December 15, 1865; Florida, December 28, 1865 (Florida again ratified this amendment on June 9, 1868, upon its adoption of a new constitution); Iowa, January 17, 1866; New Jersey, January 23, 1866 (after having rejected the amendment on March 16, 1865); Texas, February 18, 1870; Delaware, February 12, 1901 (after having rejected the amendment on February 8, 1865). The amend-

⁷ The thirteenth amendment was proposed by Congress on January 31, 1865, when it passed the House [Cong. Globe (38th Cong., 2d sess.) 531], having previously passed the Senate on April 8, 1864 [*Id.* (38th Cong., 1st sess.) 1490]. It appears officially in 13 Stat. 567 under date of February 1, 1865. Ratification was completed on December 6, 1865, when the legislature of the twenty-seventh State (Georgia) approved the amendment, there being then 36 States in the Union. On December 18, 1865, Secretary of State Seward certified that the thirteenth amendment had become a part of the Constitution [13 Stat. 774].

A "thirteenth amendment" depriving of United States citizenship any citizen who should accept any title, office, or emolument from a foreign power, was proposed by Congress on May 1, 1810, when it passed the House [21 Ann. Cong. (11th Cong., 2d sess.) 2050], having previously passed the Senate on April 27 [20 Ann. Cong. (11th Cong., 2d sess.) 672]. It appears officially in 2 Stat. 613. It failed of adoption, being ratified by but 12 States up to December 10, 1812 [2 Miscell. Amer. State Papers, 477-478; 2 Doc. Hist. Const. 454-499], there then being 18 in all.

Another "thirteenth amendment", forbidding any future amendment that should empower Congress to interfere with the domestic institutions of any State, was proposed by Congress on March 2, 1861, when it passed the Senate [Cong. Globe (36th Cong., 2d sess.) 1403], having previously passed the House on February 28 [*Id.*, 1285]. It appears officially in 12 Stat. 2512. It failed of adoption, being ratified by but three States: Ohio, May 13, 1861 [58 Laws Ohio 190]; Maryland, January 10, 1862 [Laws Maryland (1861-62) 21]; Illinois, February 14, 1862 [2 Doc. Hist. Const., 518] irregular, because by convention instead of by legislature as authorized by Congress.

from Senate Manual ... 90th Congress, 1st Session,
Senate Document No. 1

ment was rejected by Kentucky on February 24, 1865, and by Mississippi on December 2, 1865.

AMENDMENT XIV

[784.1] SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[784.2] SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

[784.3] SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States,

